IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7922 of 2005

Between:

C.K. Mishra, I.F.S., S/o. Rama Krishna Mishra, Divisional Forest Officer, Bellampally, Adilabad.

..... PETITIONER

AND

1 The Union of India, represented by its Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi.
2 The Government of A.P., represented by the Chief Secretary, Secretariat, Hyderabad.
3 The Government of A.P., represented by its Secretary to Government (Political), Secretariat, Hyderabad.
4 The Principal Chief Conservator of Forests, Department of Forests, Government of
A.P., Aranya Bhavan, Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus, and set-a-side the judgment of adverse remarks entered in petitioners ACR for the period from 24.05.1995 to 23.11.1995 as violation of rule 8 of all India Service (CR) Rules 1970 and also set as side the appeal rejection order dt. 31.5.2001 as illegal, arbitrary.

Counsel for the Petitioner: MR.K.SUDHAKAR REDDY

Counsel for the Respondent No.1: MR.B.KAMALAKARA RAO

Counsel for Respondents 2 to 4: G.P. FOR SERVICES-I.

The Court made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by the Central Administrative Tribunal (for brevity Tribunal) in O.A.No.1006 of2003, dated 9.1.2004.

2. The petitioner is an IFS Officer and the applicant before the Tribunal. He filed the above OA challenging the following adverse remarks communicated to him by the Principal Chief Conservator of Forests in reference No.25178/96-M4, dated 18.7.1996 as affirmed by the Government in Memo No.172/SC-E/99-15, dated 31.5.2001:

> "Sub: All India Services – I.F.S. Adverse Remarks in the Annual Confidential Report of Sri C.K.Mishra, I.F.S. (85) former Dy.Conservator of Forests, Wild Life Investigation, Hyderabad and present Divisional Forest Officer, Karimnagar East Division for the period from 13.6.1994 to 23.11.1995 – Communication of Adverse Remarks – Reg.
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> Very poor quality of work output. The officer does not pay any head to either office administration nor his field administration pointed out vide Conservator of Forests, Wild Life Management, Hyderabad office inspection note and in Ref.No.4289/93/94, dated 3.11.1995. The Officer has failed to submit his self-assessment. The quality of performance of the officer during the period under comment was very substandard. He had no definite programme of work schedule nor he had any definite form of objectives. However one objection was very clear – how to get out of non-focal point to a focal point post. Level of knowledge of functions very poor. The administrative functioning of the officer was negligible and his attitude indifferent towards work. The officer has been trained in wild life management and his application of his knowledge and skill in the field was very poor and substandard as pointed in Conservator of Forests, Wild Life Management, Hyderabad Ref.No.1480/95/W1, dated 23.9.1995, U.O.Note No.3146/95/W4, dated 18.8.1995, and Ref No.3923/95/W2, dated 8.12.1995. Leadership quality – nil. The officer never had any confidence is himself in functioning as Dy.Conservator of Forests, Wild Life Investigation, Hyderabad hence he would never install any confidence in his staff and subordinates. His objective was to get out of a functional division to a territorial unit. The officer looks the administrative awareness of a professional forester and of a wild life manager. He has to be goaded, pursued to get any official work done. Shirk responsibility, leave the subordinates to their fate, a poor guide

> and a very poor. Ability to anticipated problems nil. Willingness to take additional work – This question does not arise nor the officer does not even do his legitimate duties expected from the post. Location making ability very poor. Does not possess any communication skill. He is lower in inter-personal relations and team work. A very good example of an officer, who strikes his responsibility, a non-motivator, a poor wild lifer and forester, very poor in office work, leave administration to the whims of the subordinates and a bad example to the fresh recruits of the service. Graded as below average".

Thereafter though the petitioner sought for Substantiation Report as required under Rule 8 of All India Services Confidential Rules, 1970, it was not furnished to him. Subsequently he made a representation to the Government on 18.12.1999, but the Government rejected the same by an order dated 31.5.2001 by observing as follows:

> "The representation of Sri C.K.Mishra, IFS, has been sent to the concerned authorities who have recorded the remarks for comments. They have stated that the Member of Service had failed to even to initiate his own self-assessment of ACR as per rules, which clearly speaks about the neglect of primary duties of the Member of Service. He exhibited indifferent attitude to the works entrusted to him. If no further complaints are made on him by his successor, the remarks may expunge, if so desired. Since the Member of Service has not improved and he also had adverse remarks during the period 1996-97, the adverse remarks cannot be expunged.
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> After careful examination of the representation of the Member of Service, and the comments of the concerned authorities, the Government have decided not to expunge the remarks on record".

Aggrieved by the said communication the petitioner filed the above OA before the Tribunal. The learned Tribunal, after considering the matter, held that the petitioner had submitted self-assessment report and on that ground he cannot be found fault with, but with regard to the adverse remarks the learned Tribunal refused to interfere with the same and dismissed the OA. Against the said dismissal order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that the order of the Tribunal is wholly illegal and misconceived. The Tribunal failed to note when once the grounds mentioned in the order of the Government dated 31.5.2001 are no more in existence, automatically it ought to have dropped the adverse remarks. Making his submission on this issue, the learned counsel would submit that the representation was rejected by the Government on two issues, firstly, that the petitioner failed to initiate his own

self-assessment ACR as per Rules and secondly he exhibited indifferent attitude to the works entrusted to him. As far as first point is concerned, the Tribunal has in fact accepted that he submitted his self-assessment report and therefore that part of the reason falls to ground. Hence, the issue that arises for consideration is as to whether the adverse remarks relating to the alleged indifferent attitude can be sustained.

4. It is to be noted that immediately after the report was submitted by the Principal Chief Conservator of Forests, he sought for a substantiation report as prescribed under Rule 8 of the Rules, but the same has not furnished to him. In this regard it is relevant to extract Rule 8 of the Rules, which reads as follows:

> "**Communication of adverse remarks**—(1) Where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report.
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> 2) Where the reporting authority or the reviewing authority or the accepting authority records adverse remark, he shall record a note to the effect that the remark is an adverse remark :
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> Provided that the question whether a particular remark recorded in the confidential report of a member of the service is an adverse remark or not shall be decided by the Government :
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> Provided further that in the event of any difference of opinion between the Central Government and the Government of a State whether a particular remark is to be deemed an adverse remark or not, the opinion of the Central Government shall prevail".

5. A reading of the above Rule would clearly indicate that the adverse report shall be communicated to the member of the service in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the Confidential Report. Admittedly in the instant case, no such substantiation report was furnished to the petitioner, but on the other hand it is on record that in respect of the alleged deficiencies mentioned in the adverse remarks, charges were framed against the petitioner and ultimately a regular enquiry was conducted and the petitioner was exonerated in the enquiry. Under those circumstances, again to find that the petitioner exhibited indifferent attitude to the works entrusted to him cannot

be sustained. But the Tribunal did not consider this aspect. Even though the learned counsel for the petitioner placed reliance on the Judgment reported in BADRINATH vs. GOVERNMENT OF TAMILNADU[1], the Tribunal refused to consider the same on the ground that it is distinguishable on facts. Be that as it may, when the very substratum of adverse remarks were set aside when the charge sheet was issued and enquiry was conducted and in the enquiry, the petitioner was not found guilty, again sticking to the same adverse remarks is nothing but clear indication of inferential *mala fide* attitude of the authorities. Under those circumstances, we find that the order of the Tribunal is not sustainable and accordingly it is set aside and the adverse remarks as made against the petitioner in the proceedings dated 18.7.1997 are hereby expunged. The petitioner shall be considered for further promotion, if any, in accordance with the Rules as if there are no adverse remarks against him, as referred to above.

6. Accordingly the Writ Petition is allowed. No costs.

(G.BIKSHAPATHY, J.)

28th April, 2005.

SSR (P.S.NARAYANA, J.)

To

1 The Secretary, Ministry of Environment and Forests, Union of India, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi.
2 The Chief Secretary, Government of A.P., Secretariat, Hyderabad.
3 The Secretary to Government (Political), Government of A.P., Secretariat, Hyderabad.
4 The Principal Chief Conservator of Forests, Department of Forests, Government of

A.P., Aranya Bhavan, Saifabad, Hyderabad.

5 The Registrar, Central Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

7 2 CD copies

8 1 CC to MR.SUDHAKAR REDDY, Advocate, High Court Buildings,

A.P. Hyderabad. (OPU)

*Form-NIC-OGS/WP{**JGK**}*